

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:08CV152-03-MU

JAMES A. WHALEY,)
)
Plaintiff,)
)
v.)
)
MICHAEL H. GRIFFIN, Attorney,)
)
Defendant.)
_____)

ORDER

THIS MATTER is before the Court on Plaintiff's Second Motion for Reconsideration of the Court's Order dismissing his case (Document No. 8.) By the instant motion, Plaintiff asks this Court to reconsider the Order dismissing his Complaint for failure to state a claim for relief.

After conducting an initial review of Plaintiff's Complaint, this Court concluded that Petitioner had not stated a claim pursuant to § 1983 and dismissed his Petition (Document No. 2.) By the instant motion, filed on April 30, 2008, Plaintiff asks this Court to reconsider its previous Order and simply rehashes the same litany of complaints regarding his attorney that he stated in his original Complaint and his first Motion for Reconsideration. As stated in the Order dismissing the Complaint, a defense attorney, whether privately retained or publically appointed, is not amenable to suit under § 1983. Hall v. Quillen, 631 F.2d 1154 (4th Cir. 1980); Deas v. Potts, 547 F.2d 800 (4th Cir. 1976); Polk County v. Dodson, 454 U.S. 312 (1981). The basis for this Court's dismissal still stands and Plaintiff has not asserted any new claims that would alter the analysis of that Order. Therefore, Plaintiff's Motion for Reconsideration is denied and Plaintiff's case is closed. As stated in this Order and the two previous Orders issued by the

Court, Plaintiff may not maintain a § 1983 lawsuit against his defense counsel. No further motions or correspondence will be filed in this case and any such letters or motions received by the Court will be sent back to the Plaintiff. Moreover, Plaintiff is on notice that the Court is aware that he has had three lawsuits dismissed in this Court for failure to state a claim for relief.¹ Pursuant to 28 U.S.C. § 1915(g), a prisoner may not bring a civil action under this statute, if on three or more occasions, he has brought an action or an appeal in the federal court that was dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury. 28 U.S.C. § 1915(g). Accordingly, Plaintiff is barred from filing any further § 1983 actions without the requisite showing of danger and is on notice that absent such a showing such cases will be dismissed under 28 U.S.C. §1915(g)

NOW, THEREFORE, IT IS HEREBY ORDERED that Plaintiff's Motion for Reconsideration (Document No. 8) is **DENIED**.

SO ORDERED.

Signed: May 19, 2008



Graham C. Mullen
United States District Judge



¹ See 1:08cv125; 1:08cv152 and 1:08cv169.